Abdul Shaik bin Md Ibrahim & Anor v Hussein bin Ibrahim & Ors

HIGH COURT (PULAU PINANG) — CIVIL SUIT NO 22–85 OF 1997
ABDUL HAMID MOHAMAD J
23 APRIL 1999

Islamic Law *— Jurisdiction — Syariah court — Application for declaration that adoption under Registration of Adoptions Act 1952 null and void — Whether jurisdiction to determine application with High Court or syariah court*

Islamic Law *— Jurisdiction — Syariah court — Application for order that child be returned to natural parents or alternatively for parents to be granted access to child — Whether jurisdiction to determine application with High Court or syariah court*

On 22 June 1989, a baby girl ('the child') was born to the plaintiffs. About 27 days later, the child was handed over to the first and second defendants to be made their 'adopted child'. It was alleged by the plaintiffs that both parties had agreed that the child should be returned to the plaintiffs should the first and second defendants have a child of their own. In August 1991, the child was registered pursuant to the Registration of Adoption Act 1952 as the adopted child of the first defendant. In August 1996, the second defendant gave birth to a child. Pursuant to the alleged agreement, the plaintiffs requested for their child to be returned to them. The first and second defendants refused and also refused the plaintiffs access to the child. The plaintiffs commenced an action and prayed, amongst other things, for: (a) a declaration that the adoption of the child and the registration thereof was null and void and an order that the adoption and the registration thereof be cancelled; (b) an order that the first and second defendants return the child to the plaintiffs or alternatively that the plaintiffs be granted access to the child. The first and second defendants then applied for the plaintiffs' writ and statement of claim to be struck out on the ground that the claims were within the jurisdiction of the syariah court and not this court. The application was dismissed by the senior assistant registrar and the defendants appealed.

Held, dismissing the appeal regarding the registration of the adoption and allowing the appeal regarding the prayer for the return of the child to the plaintiff and the alternative prayer for access:

(1) The court in determining the question of jurisdiction of the syariah court, and consequently of the civil court, should look at the relevant State Enactment and not the State List in the Ninth Schedule. Article 74(2) of the Federal Constitution empowers the State Legislatures to make laws on matters contained in the State List. State Legislatures make laws on those matters including the establishment of syariah courts and confering them with jurisdiction over matters enumerated therein. The use of the word 'any' in the State List means that a State Legislature can choose

which matters, from amongst the matters enumerated in the State List, it wants to confer jurisdiction to the syariah courts (see pp 624H–625B).

(2) The case is not removed from the jurisdiction of the syariah court merely because the plaintiffs have prayed for the remedy of declaration (see p 626H–I); *Majlis Agama Islam Pulau Pinang v Isa Abdul Rahman & satu yang lain* [1992] 2 MLJ 244 not followed; and *Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 1 MLJ 489 followed .

(3) The registration of the adoption of the child was void. Section 31 of the Adoption Act 1952 excludes the operation of the Act from Muslims. The Registration of Adoption Act 1952 is to be read together with the Adoption Act 1952, otherwise the provision of s 31 would be defeated (see p 627A–D).

(4) It is within the jurisdiction of the High Court to declare that the adoption of the child and the registration thereof under the Registration of Adoption Act 1952 are void and that the registration should be annulled as the Act is a Federal law and the Registrar of Adoptions has wrongly applied it (see p 627D–F).

(5) The prayer for the return of the child involves, at least, the question of custody which is a matter clearly within the jurisdiction of the syariah court as provided for in the Islamic Family Law (State of Penang) Enactment 1985 (see p 627F–G).

Obiter:

As Islamic law is a state matter, a decision of a superior court on the question of jurisdiction may or may not be binding on a lower court. It is binding if the decision is based on the law of the state in which the matter is being decided or the law of another state that is in pari materia with the law of the state in which the matter is being decided. It is not binding if the law of the state applicable to the case is repugnant to such a decision (see p 625E–F).

[Bahasa Malaysia summary

Pada 22 Julai 1989, seorang bayi perempuan ('kanak-kanak tersebut') telah dilahirkan kepada plaintif-plaintif. Lebih kurang 27 hari kemudian, kanak-kanak tersebut telah diserahkan kepada defendan pertama dan kedua untuk dijadikan 'anak angkat' mereka. Adalah dikatakan oleh plaintif-plaintif bahawa kedua-dua pihak telah bersetuju bahawa kanak-kanak tersebut akan dipulangkan jika defendan pertama dan kedua mempunyai anak mereka sendiri. Pada Ogos 1991, kanak-kanak tersebut telah didaftarkan menurut Akta Pendaftaran Pengangkatan 1952 sebagai anak angkat defendan pertama. Pada Ogos 1996, defendan kedua telah melahirkan seorang bayi. Atas perjanjian yang dikatakan tersebut, plaintif-plaintif telah meminta agar anak mereka dikembalikan. Defendan pertama dan

kedua enggan dan juga enggan memberikan akses kepada plaintif-plaintif untuk melihat anak mereka. Plaintif telah memulakan suatu tindakan dan telah memohon, antara lain, bahawa: (a) satu deklarasi bahawa pengangkatan kanak-kanak tersebut dan juga pendaftarannya dibatalkan; (b) satu perintah bahawa defendan pertama dan kedua memulangkan kanak-kanak tersebut kepada plaintif atau secara alternatif bahawa plaintif-plaintif diberikan akses kepada kanak-kanak tersebut. Kemudian defendan pertama dan kedua memohon agar writ plaintif dan juga pernyataan tuntutan diketepikan atas dasar bahawa tuntutan-tuntutan tersebut adalah di dalam bidang kuasa mahkamah syariah dan bukan mahkamah ini. Permohonan telah diketepikan oleh penolong kanan pendaftar dan defendan telah merayu.

Diputuskan, menolak rayuan berkenaan dengan pendaftaran pengangkatan tersebut dan membenarkan rayuan berkenaan permohonan untuk pemulangan kanak-kanak tersebut kepada plaintif dan permohonan alternatif untuk akses:

(1) Mahkamah dalam menentukan persoalan bidang kuasa mahkamah syariah, dan kemudian mahkamah sivil, patut melihat Enakmen Negeri yang berkenaan dan bukannya Senarai Negeri di dalam Jadual Kesembilan. Artikel 74(2) Perlembagaan Persekutuan memberi kuasa kepada Badan Perundangan Negeri untuk membuat undang–undang berkenaan dengan perkara yang terkandung di dalam Senarai Negeri. Badan Perundangan Negeri membuat undang-undang berkenaan perkara yang termasuk penubuhan mahkamah syariah dan memberi mereka bidang kuasa mengenai perkara yang tersenarai di dalamnya. Perkataan 'apa-apa' di dalam Senarai Negeri bermaksud Badan Perundangan Negeri boleh memilih perkara mana, daripada yang tersenarai di dalam Senarai Negeri, yang ia mahu untuk memberikan kuasa kepada mahkamah syariah (lihat ms 624H–625B).

(2) Kes tersebut tidaklah dikeluarkan daripada bidang kuasa mahkamah syariah semata-mata kerana plaintif-plaintif telah memohon untuk perintah deklarasi (lihat ms 626H–I); *Majlis Agama Islam Pulau Pinang v Isa Abdul Rahman & satu yang lain* [1992] 2 MLJ 244 tidak diikut; dan *Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 1 MLJ 489 diikut.

(3) Pendaftaran pengangkatan tersebut adalah tidak sah. Seksyen 31 Akta Pengangkatan 1952 mengecualikan operasi Akta tersebut kepada orang Islam. Akta Pendaftaran Pengangkatan 1952 mestilah dibaca bersama dengan Akta Pengangkatan 1952, jika tidak, peruntukan s 31 tidak akan membawa makna (lihat ms 627A–D).

(4) Adalah di dalam bidang kuasa Mahkamah Tinggi untuk mengisytiharkan bahawa pengangkatan kanak-kanak tersebut dan

juga pendaftaran tersebut adalah tidak sah dan bahawa pendaftarannya patutlah dibatalkan kerana Akta tersebut adalah suatu perundangan Persekutuan dan Pendaftar Pengangkatan telah memakainya secara salah (lihat ms 627D–F).

(5) Permohonan untuk pengembalian kanak-kanak tersebut melibatkan, sekurang-kurangnya, persoalan jagaan yang secara jelas di dalam bidang kuasa mahkamah syariah seperti yang diperuntukkan di dalam Enakmen Undang-Undang Keluarga Islam (Negeri Pulau Pinang) 1985 (lihat ms 627F–G).

Obiter:

Oleh kerana undang-undang Islam adalah suatu perkara negeri, suatu keputusan mahkamah atasan berkenaan dengan persoalan bidang kuasa mungkin atau tidak mungkin mengikat mahkamah bawahan. Ia adalah mengikat jika keputusan tersebut adalah berdasarkan undang-undang negeri berkenaan di mana perkara tersebut diputuskan atau undang-undang negeri lain yang pari materia dengan undang-undang negeri di mana perkara tersebut diputuskan. Ia adalah tidak mengikat jika undang-undang negeri tersebut yang terpakai kepada kes adalah bertentangan dengan suatu keputusan tersebut (lihat ms 625E–F).]

Notes

For cases on jurisdiction of a syariah court, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 348–391.

Cases referred to

Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor [1992] 1 MLJ 1 (refd)

Lim Chan Seng lwn Pengarah Jabatn Agama Islam Pulau Pinang & satu kes yang lain [1996] 3 CLJ 231 (refd)

Majlis Agama Islam Pulau Pinang v Isa Abdul Rahman & satu yang lain [1992] 2 MLJ 244 (not folld)

Md Hakim Lee v Majlis Agama Islam Wilayah Perseketuan, Kuala Lumpur [1998] 1 MLJ 681 (refd)

Mohamed Habibullah bin Mahmood v Faridah bte Dato Talib [1992] 2 MLJ 793 (refd)

Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor [1999] 1 MLJ 489 (folld)

Legislation referred to

Administration of Islamic Religious Affairs (State of Penang) Enactment 1993 ss 48, 49

Administration of Muslim Law (Penang) Enactment 1959

Administration of Muslim Law (Penang) Enactment 1993

Adoption Act 1952 s 31

Federal Constitution arts 74(2), 121(1A), Sch 9, List I para 4(e), List II
Islamic Family Law (Penang) Enactment 1985 s 107
Islamic Family Law (State of Penang) Enactment 1985 ss 81–87
Registration of Adoption Act 1952
Rules of the High Court 1980 O 18 r 19

Thayalan (*Thayalan & Associates*) for the plaintiff.
Habib Rahman (*T Tharuma & Associates*) for the first and second defendants.

Abdul Hamid Mohamed J: In this case, the plaintiffs are husband and wife. The first and second defendants are also husband and wife. The first plaintiff is the brother of the second defendant. They are all Muslims. The third defendant is the Registrar of Adoptions in the state of Pulau Pinang.

On 22 June 1989 the second plaintiff gave birth to a baby girl who was given the name Noorhadiah bte Abdul Shaik (Abdul Shaik, the first plaintiff is her natural father). Her name was so registered in her birth certificate.

On 29 July 1989, when the baby was 27 days old, the baby was handed over to the first and second defendants to be made their 'adopted child' (untuk dijadikan anak angkat) because the first and second defendants did not have any child of their own even though they had been married for more than nine years.

According to the plaintiffs' statement of claim, it was agreed by both parties that if the first and second defendants were to have their own child later, the first and second defendants would return the said child to the plaintiffs.

On 28 August 1991, the third defendant (the Registrar of Adoptions), on the application of the first and second defendants, registered the child as their adopted child pursuant to the Registration of Adoptions Act 1952. The register shows that the name of the father of the child was changed to Hussein, the first defendant.

On 16 August 1996 the second defendant gave birth to a child. So, pursuant to the alleged agreement, the plaintiffs requested for their child to be returned to them, but the first and second defendants refused. The first and second defendants also refused the plaintiffs access to their said child. The plaintiffs pray for:

(a) a declaration that the adoption of the child is null and void;
(b) a declaration that the registration of the adoption is null and void;
(c) an order that the adoption and the registration thereof be cancelled;
(d) an order that the first and second defendants return the said child to the plaintiffs;
(e) an order that the third defendant annul the registration of adoption and to cancel the memorandum of adoption on the child's birth certificate;
(f) in the alternative the plaintiffs prayed for access to the said child;
(g) that costs be paid by the first and second defendants.

A On 6 May 1997, the first and second defendants filed a summons in chambers praying for an order that the writ and the statement of claim be struck out under O 18 r 19 of the Rules of the High Court 1980 ('the RHC 1980'). Only one point was raised, that is that the claims are within the jurisdiction of the syariah court and not this court. The application was heard by the senior assistant registrar. On 20 June 1998, the senior assistant B registrar dismissed the application. The first and second defendants appealed to the judge in chambers. After hearing the arguments of both learned counsels, I reserved judgment as I thought I should give a written judgment as the question of jurisdiction of the syariah court and this court are always problematical and of public interest.

C So, there is now a challenge to the jurisdiction of this court. The plaintiffs say that the matter is within the jurisdiction of this court. The defendants say it is within the jurisdiction of the syariah court.

It is settled law that, in view of the provisions of art 121(1A) of the Federal Constitution, if a matter falls within the jurisdiction of the syariah D court, this court has no jurisdiction over it — see judgment of Hashim Yeop Sani CJ (Malaya) in *Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor* [1992] 1 MLJ 1, *Majlis Agama Islam Pulau Pinang v Isa Abdul Rahman & satu yang lain* [1992] 2 MLJ 244, *Mohamad Habibullah bin Mahmood v Faridah bte Dato Talib* [1992] 2 MLJ 793 and *Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia* E *(PERKIM) Kedah & Anor* [1999] 1 MLJ 489.

How should the court approach the problem? There are two issues in this question. First, regarding the law conferring jurisdiction, should the court look at the State Enactments or List II — State List in the Ninth Schedule of the Federal Constitution (the 'State List')? Secondly, regarding F the matter before the court, should the court look at the subject matter of the action or the remedies prayed for?

Regarding the first question, there are two views. The view I took in *Lim Chan Seng lwn Pengarah Jabatan Agama Islam Pulau Pinang dan satu kes yang lain* [1996] 3 CLJ 231 is that the court should look at the State G Enactments. On the other hand, my learned brother Abdul Kadir Sulaiman J in *Md Hakim Lee v Majlis Agama Islam Wilayah Persekutuan, Kuala Lumpur* [1998] 1 MLJ 681 took the view that the court should look at the State List, even if the State Legislature has not made law on the matter.

H *Has this issue been settled?*

The Federal Court, in its latest judgment on the issue written by Mohamed Dzaiddin FCJ has this to say in *Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* at p 501:

I > It cannot be disputed that the syariah court derives its jurisdiction under a state law enacted pursuant to art 74(2) of the Constitution following para 1, State List of the Ninth Schedule of the Constitution and in the case of the Federal Territories by virtue of item 6(e) Federal list. ...

At p 502, the learned judge said:

> We hasten to add that both the learned judge in the instant case and Abdul Kadir Sulaiman J in *Md Hakim Lee*, for different reasons, also had recourse to a construction by implication to found the jurisdiction of the syariah court to deal with the question of conversion out of Islam. Abdul Kadir Sulaiman J, in particular, adopted a liberal interpretatlon of the Wilayah Act. On the other hand, Abdul Hamid J, in *Lim Chan Seng* applied a strict interpretation by confining the meaning of the word 'jurisdiction' to the express jurisdiction of the syariah courts enacted in the State Enactments, where in that case he found no express provisions in the Penang State Enactment. Whilst we agree with the approach adopted by Abdul Hamid J following *Habibullah*, that when there is a challenge to jurisdiction the correct approach is to look at the State Enactments to see whether or not the syariah courts have been expressly conferred jurisdiction on a given matter, with respect, we do not agree with his Lordship's conclusion that since the Penang Enactment did not expressly confer jurisdiction on the syariah court over the matter raised, there was no impediment for the civil court to hear and dispose of the matter.

My understanding of the judgment is as follows:

(a) when there is a challenge to the jurisdiction of the syariah court (or for that matter of this court vis-a-vis the jurisdiction of the syariah court) the court should look at the State Enactments, not the State List to see whether the syariah court has jurisdiction over the matter and if it has, then, this court has no jurisdiction over the matter;

(b) however in the case of conversion out of Islam, since the relevant Penang State Enactment (indeed the Enactments of other states) contains provisions regarding conversion into Islam, the jurisdiction over conversion out of Islam, may be inferred.

We are only concerned with (a) now. I think the words used by Mohamed Dzaiddin SCJ are very clear: '... when there is a challenge to jurisdiction the correct approach is to look at the State Enactments ...'. Secondly, the learned judge also said that they (the Federal Court judges) agreed with my approach in *Lim Chan Seng* following *Mohamed Habibullah*. And, this is what Harun Hashim SCJ said in *Mohamed Habibullah* at p 800:

> ... I am therefore of the opinion that when there is a challenge to jurisdiction, as here, the correct approach is to firstly see whether the Syariah Court has jurisdiction and not whether the state legislature has power to enact the law conferring jurisdiction on the Syariah Court.

Article 74(2) of the Federal Constitution empowers the State Legislatures to make laws on matters contained in the State List. The heading of the Ninth Schedule itself is 'Legislative List'. Article 74(2) does not make law for the states. It is the State Legislatures that make laws for the respective states, and are empowered to do so on matters contained in the State List. That is why State Legislatures have been making laws on those matters including the establishment of syariah courts and conferring them with jurisdiction over matters enumerated therein. (For example, see ss 48, 49 of the Administration of Islamic Religious Affairs Enactment of the State of Penang 1993). Otherwise it would not be necessary for the State Legislatures to do so.

A The other point which so far has not been highlighted is the use of the word 'any' in the State List itself:

> ... the constitution, organization and procedure of syariah courts which shall have jurisdiction only over persons professing the religion of Islam *and in respect only of ANY of the matters* included in this paragraph ... . (Emphasis added.)

B

The use of the word 'any' can only mean that when a State Legislature makes laws establishing the syariah court in a state, it can choose from amongst the matters enumerated in the State List which of them it wants to confer jurisdiction to the syariah courts. Had the drafters of the Constitution intended otherwise, they would have said so. That is why, in C my view, the State Legislatures in all states, in all laws that they make establishing syariah courts in their respective states have always made provisions regarding the jurisdictions of such courts on specific matters contained in the State List. State Legislatures may of course confer jurisdiction on the syariah courts over all matters contained in the State List D merely by saying that the syariah courts shall have jurisdiction over all matters contained in the State List. But none of the State Legislatures has chosen to do that.

So, it is my humble view that this court in determining the question of jurisdiction of the syariah court (and therefore of this court) should look at the relevant State Enactment and not the State List in the Ninth Schedule. E

A word should be said regarding the effects of judgments of courts superior to this court on the question of jurisdiction. First and foremost, it should be remembered that Islamic law is a state matter. The court in deciding a particular case must look at the law of the state in which the matter arises. A decision of a court superior to this court may or may not be F binding on this court. It is binding if the decision is based on the law of that state or the law of another state that is in pari materia with the law of the state in which the matter is being decided. It is not binding if the law of the state applicable to the case is repugnant to such decisions. General principles laid down by superior courts are, of course, binding on this court. A good example is *Soon Singh*'s case. All relevant State Enactments contain G provisions for conversion into Islam. Even if they do not contain provisions regarding conversion out of Islam, that can be inferred.

Of course, this may result in a situation where on a similar matter the decision arrived at by the court in one state differs from a decision in another state. That is unavoidable, and the court should not be blamed. If H the States Legislatures in their wisdom choose to enact different laws or enact differently, that is their prerogative. They must be presumed to have intended it. The court must respect their intentions. It is not the function of the court, indeed it is outside the powers of the court to try to 'legislate', even for the sake of uniformity. The court must adhere to the doctrine of separation of powers between the Judiciary, the Legislature and the I Executive. Neither branch should encroach upon the other's territory.

The other point is in determining whether the matter before the court falls under the jurisdiction of which court, the syariah or this court, should the court look at the subject matter of the action or the remedies prayed for.

This issue is relevant in this case because the first two prayers of the plaintiffs are for declarations. A

In *Majlis Agama Islam Pulau Pinang v Isa Abdul Rahman & satu yang lain*, the subject matter of the suit was 'wakaf'. The plaintiff/appellant prayed for an injunction. The Supreme Court held that the claim could only be heard by the High Court. The reason is that the Administration of Muslim Law Enactment 1959 (Penang) did not provide for the remedy of injunctions and therefore the syariah court in Penang does not have the jurisdiction to issue an order of injunction. The remedy of injunction is provided by the Specific Relief Act 1950 (and the rules are to be found in O 53 RHC 1980) which power is given to the High Court. Therefore, a claim for perpetual injunction can only be heard by the High Court. That is what that case decides. B C

It must be pointed out even under the Administration of Muslim Law Enactment 1993 which replaced the 1959 Enactment, there is no provision for the remedy of injunction or declaration and, until today, there is still no Civil Procedure Rules or Enactment for the syariah courts in Penang. However, there is provision for a specific kind of injunction, that is, injunction against molestation under s 107 of the Islamic Family Law Enactment 1985 (Penang) which is not applicable here. So, if I were to adopt the approach laid down in *Isa Abdul Rahman* regarding the two prayers, even at the outset the syariah court has no jurisdiction to grant them. D E

I have, with the greatest of respect to the Supreme Court, pointed out in Lim Chan Seng that the judgment may give rise to an undesirable effect: a party may by the inclusion of a prayer for a remedy not provided in the law applicable to the syariah court, remove a matter, the subject matter of which is within the jurisdiction of the syariah court, to the civil court. F

It appears to me that the Federal Court has now adopted the 'subject matter' approach rather than the 'remedy prayed for' approach. This is to be found in the passage which I have reproduced earlier which perhaps I may be excused for reproducing part of it again:

> ... whilst we agree with the approach adopted by Abdul Hamid J following *Habibullah*, that when there is a challenge to jurisdiction the correct approach is to look at the State Enactments to see whether or not the syariah courts have been expressly conferred jurisdiction on a given matter ... . (Emphasis added.) G

It is also important to note that in *Soon Singh*'s case itself the remedy sought was for a declaration. Yet, the Federal Court considered the question of jurisdiction purely on the 'subject matter' approach. H

In the circumstances, I think I am no longer bound by *Isa Abdul Rahman*'s case. Therefore, in this case the fact the remedy prayed for in two of the prayers is, ie declaration does not remove the case from the jurisdiction of the syariah court. In other words, in the present case I do not hold that the syariah court has no jurisdiction over this matter merely because the plaintiffs have prayed for the remedy of declaration. I

Now, looking at the subject matter of this action, what is of utmost importance is the registration of the child as an adopted child of the first

defendant by the Registrar of Adoptions pursuant to the Registration of Adoptions Act 1952.

The first question that arises is whether the Act applies to Muslims. The Act is silent. However, s 31 of the Adoption Act 1952 provides:

> This Act shall not apply to any person who professes the religion of Islam either so as to permit the adoption of any child by such a person or so as to permit the adoption by any person of a child who according to the law of the religion of Islam is a Muslim.

The reason why Muslims are excluded from the operation of the Adoption Act 1952 is obvious. The effect of adoption under the Act is repugnant to Islamic Law. I need not elaborate on this.

I am of the view that the two Acts should be read together otherwise the purpose for excluding Muslims from the operation of the Adoption Act 1952 is defeated.

I am therefore of the view that the registration is void.

The next question is whether this court or the syariah court has jurisdiction to declare the registration void.

The Act is a Federal law that clearly falls under para 4(e) of List I — Federal List of the Ninth Schedule of the Federal Constitution which empowers the Federal Legislature to make laws regarding adoption of non-Muslims. But the Registrar of Adoptions has wrongly applied it on a Muslim child. I think it is within the jurisdiction of this court to declare that the Registrar of Adoptions was wrong when he applied the Act to Muslims. Therefore, I am of the view that the claim, in so far as it seeks a declaration that the adoption of the child and the registration thereof under the Registration of Adoptions Act 1952 are void and that the registration should be annulled, is within the jurisdiction of this court to hear and determine.

However, there are other prayers ie that the defendants return the said child to the plaintiffs, or in the alternative that the plaintiffs be given access to the child.

The Islamic Family Law (State of Penang) Enactment 1985 contains provisions regarding custody of a child — ss 81 to 87. It also contains provisions regarding guardianship of a child.

I am of the opinion that the prayer for the return of the child involves, at least, the question of custody which is a matter clearly within the jurisdiction of the syariah court.

In the circumstances, I dismiss the appeal regarding the registration of the adoption under the Registration of Adoptions Act 1952, but allow the appeal regarding the prayer for the return of the child to the plaintiff and the alternative prayer for access. The plaintiff should file a fresh action in the syariah court for the last mentioned prayer.

It is unfortunate for the Muslims of this country that, in a matter as this, they have to commence two separate actions in two different courts which entails more costs and delays. In a similar matter involving non-Muslims, in one action in this court, all the prayers could be heard and decided by this court alone. Perhaps my suggestion in *Lim Chan Seng* on unification (or

merger) of the Syariah and Civil Courts is worth considering. It is heartening to note that former Supreme Court judge, Harun Hashim, has expressed a similar view in his article 'Merge Legal System to Avoid Injustice'— see New Straits Times 15 April 1999, p 10. Of course it would not be an easy thing to do.

In the circumstances of this case, I make no order as to costs.

Order accordingly.

Reported by Joel Ng